IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

THURSDAY, THE 2ND AUGUST 2007 / 11TH SRAVANA 1929

CRL.A.No. 648 of 2007(A)

SC.405/2006 ON THE FILE OF THE COURT OF THE ADDL. SESSIONS JUDGE (ADHOC) II, KALPETTA
CP.82/2006 of JUDL. MAGISTRATE OF FIRST CLASS-II, SULTHANBATHERY

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APPELLANT: PETITIONER

P.J.JOY,
CONVICT NO.4539, CENTRAL PRISON, KANNUR.

BY ADV. ADV.K.K.RAJEEV(STATE BRIEF)

RESPONDENT:

STATE OF KERALA

BY P.P. SRI.PUZHAKKARA MOHAMMED

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 02/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.Thankappan, J.

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Crl. A. No. 648 of 2007

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Dated this the 2nd day of August, 2007

JUDMENT

Accused in S.C.No.405/2006 on the file of the Court of the Addl. Sessions Judge (Adhoc)-II, Kalpetta is the appellant. He was charge-sheeted for the offences punishable under section 8(1) and (2) of the Abkari Act. The prosecution case against the appellant is that the appellant was found in carrying 50 packets of Karnataka made arrack while he was travelling in a bus bearing registration No.KL 12C/2777 without permit transit. To prove the charge against the appellant, the prosecution examined PW1 to PW6 and Exts.P1 to P7 were marked. After closing the evidence, the appellant was questioned under section Cr.P.C. He denied the prosecution allegation levelled against him and stated that he was innocent and he was arrested from a nearby shop. Relying on the evidence adduced by the prosecution, the trial court found that the appellant was guilty of the offences punishable under sections 8(1) and (2) of the Abkari Act and he was convicted thereunder and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.1,00,000/- and in default of payment of fine to undergo rigorous imprisonment for a

further period of six months. The benefit under section 428 Cr.P.C. was also granted to the appellant. The conviction and sentence awarded against the appellant are under challenge in this appeal.

3. This Court heard learned counsel for the appellant and the learned Public Prosecutor.

4. The learned counsel for the appellant had taken three contentions to challenge the impugned judgment. Firstly, it is contended that the trial court has committed serious error in finding the appellant guilty of the charge on the basis of the evidence of PWs.1 and 2 official witnesses, as the independent witnesses were not supporting the prosecution casel. Secondly, it is contended that the identity of the appellant has not been proved by the prosecution. Thirdly, it is contended that even if the evidence of the prosecution is accepted, the trial court ought to have found that PW1 detecting officer had not complied with the provisions of the Kerala Excise Manual as well as the Abkari Act while detecting the offence.

5. In the light of the contentions raised and the evidence adduced, question to be considered is whether the judgment of the trial court is justified or not?

6. The prosecution case as spoken by PWs.1 and 2 is that while PW1 Excise Inspector along with the other Excise officials checking bus bearing

registration No.KL-12C/2777 plying Perikkallur-Pulpally road, the appellant was found in holding a cover with his dothi within his legs and on examination it was revealed that the plastic cover containing 50 packets each containing 100 ml. Karnataka made arrack and on further examination it was revealed that the appellant was not having any transit permit for the same. The appellant was arrested and samples were collected from the packets of the arrack seized from the appellant. The further case of the prosecution is that the evidence of PW1 has been supported by PW2, the Asst. Excise Inspector who accompanied PW1. This witness also support the entire case of PW1.

7. To prove the case against the appellant, the prosecution relies on the evidence of PW1, PW2, PW4 and PW5. Though PW3 was examined as an independent witness to prove the seizure of MO3 cover, he turned hostile to the prosecution. PW1 who detected the offence deposed that on 26-5-2006 while he along with other Excise men was on patrol duty checked bus No.KL-12C/2777 plying from Perikkallloor to Pulpally and found the appellant holding a cover with his dothi within his legs and on examination it was found that the cover contained 50 packets each containing 100 ml. Karnataka made arrack. He further stated that the appellant was arrested on the spot and after preparing mahazar, the

contraband article was seized and the samples were taken for analysis. The evidence of PW1 was fully corroborated by the evidence of PW2 who accompanied PW1 while checking the bus. This witness also support the entire case of PW1. Though these witnesses were closely cross-examined, their evidence has not been shattered. PW6 Excise Inspector had conducted the investigation and laid the final charge. As per Ext.P7 chemical analysis report, the sample contained 24.58% of ethyle alcohol. Evidence of PWs.1 and 2 and other documents produced before the court would show that the sample and the residue were produced before the court on the next day of the incident. PW3 to 5 were examined before the court as independent witnesses, out of these witnesses, PW3-conductor admitted that the packets were seized from the appellant. The evidence of PW3 is also supported certain extent the evidence of PWs.1 and 2. The trial court after considering the entire evidence found that there was sufficient corroboration of the evidence of PWs.1 and 2 regarding the seizure of the article from the appellant by the independent witness examined as PW3. In the above circumstances, this Court finds that the finding of the trial court is based on evidence. Hence, the conviction entered by the trial court against the appellant is confirmed.

8. Regarding the sentence imposed on the appellant, the trial court had considered the question. The appellant stated that he had aged father and mother. Considering the fact that the appellant is the first offender and that the total quantity is less than 5 litres, sentence of one year rigorous imprisonment and fine of Rs.1,00,000/- and in default to undergo simple imprisonment for three months will meet the ends of justice. Hence, the appellant is sentenced to undergo rigorous imprisonment for one year and to pay fine of Rs.1,00,000/- and in default to undergo simple imprisonment for three months. The appellant shall also get the benefit of section 428 Cr.P.C.

With the above modification, the appeal stands dismissed.

K. Thankappan,
Judge.

K. Thankappan,J.

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Crl.A. No. 648 of 2007

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Judgment

2-8-2007